

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RONALD MERKOSKY,

Defendant.

CASE NO. 1:02CR168

OPINION AND ORDER  
[Resolving Doc. Nos. 68, 69, 75,78]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Before the Court is the Magistrate Judge's Report and Recommendation [Doc. 85] on the following documents: (1) Defendant Ronald Merkosky's motion for order vacating sentence and granting new trial [Doc. 69]; (2) Plaintiff the United States of America's motion to strike the defendant's motion to vacate sentence and for new trial [Doc. 68]; (3) the defendant's motion to amend his motion to vacate [Doc. 75]; and (4) the plaintiff's motion to dismiss [Doc. 78]. The defendant filed his original motion to vacate after the Sixth Circuit remanded the case for re-sentencing on his criminal convictions relating to the methamphetamine trade. The government moved to strike the defendant's motion to vacate. The defendant then moved to amend his motion to vacate. The government responded and moved to dismiss.

On January 24, 2006, the Court referred the pending motions to Magistrate Judge James Gallas for a Report and Recommendation. [Doc. 82]. After conducting a thorough analysis of the various motions, on May 3, 2006, Magistrate Judge Gallas recommended that the Court (1) deny

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the defendant's motion to vacate and motion for leave to amend, both without prejudice for lack of jurisdiction and (2) deny the government's motion to strike and motion to dismiss. [Doc. 85]. Neither party objects to the Magistrate Judge's recommendations.

The Federal Magistrates Act requires a district court to conduct a de novo review only of those portions of the Report to which an objection has been made. 28 U.S.C. § 636(b)(1). Having conducted its own review of the parties' briefs on the issue, this Court agrees with the conclusions of the Magistrate Judge, and adopts the Report and Recommendation as its own.

Therefore, the Court adopts in whole Magistrate Judge Gallas's findings of fact and conclusions of law and incorporates them fully herein by reference. The Court **DENIES**: (1) the defendant's motion to vacate and for new trial without prejudice for lack of jurisdiction [Doc. 69], (2) the defendant's motion for leave to amend without prejudice for lack of jurisdiction [Doc. 75], (3) the government's motion to strike [Doc. 68], and (4) the government's motion to dismiss [Doc. 78].

#### Conclusion

For the reasons discussed above, the Court **DENIES**: (1) the defendant's motion to vacate and for new trial without prejudice for lack of jurisdiction [Doc. 69], (2) the defendant's motion for leave to amend without prejudice for lack of jurisdiction [Doc. 75], (3) the government's motion to strike [Doc. 68], and (4) the government's motion to dismiss [Doc. 78].

Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate

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of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated: June 8, 2006

s/ *James S. Gwin*  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE